

Ms [REDACTED]

[REDACTED]
[REDACTED]

Email: [REDACTED]

Dear Ms [REDACTED]

DECISION TO ISSUE PROHIBITION NOTICE

1. As a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA), I am satisfied that there may be an unacceptable risk of harm to a child or children if you were allowed to be involved in the provision of education and care to children.
2. The Authority has investigated allegations that you failed to ensure that every reasonable precaution was taken to protect children being educated and cared for, from harm and from any hazard likely to cause injury at Edge Early Learning Charnwood SE-40014603 (the Service) operated by Edge Early Learning ACT Pty Ltd PR-40029018 (the Provider).
3. Web addresses to the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this Decision.

Facts

4. On 25 May 2024, the Authority received a direct complaint from a parent alleging that their child's hair had been cut while at the Service.
5. CCTV video footage supports that between 13:54 and 14:30 hours on 24 May 2024, there was limited to no active supervision within Studio 7, where children were being educated and cared for.
6. On 11 September 2024, the Authority issued you with a Show Cause Notice (the Notice). The Notice included evidence being relied on by the Authority for decision making and advice as to proposed compliance actions being considered if the allegation, and engaged offence under the Law, were substantiated. Refer [Attachment A](#) for a copy of the Notice (minus attachments).
7. The allegations put to you in the Notice was as follows:

On 24 May 2024, you, the Nominated Supervisor, failed to ensure that all children being educated and cared for by the service were adequately supervised at all times that the children

were in the care of that service, in that where the child, [REDACTED] (4:0) had his hair cut by a peer while attending the Service, in contravention of Section 165(2) of the National Law, giving rise to a contravention of Section 167(2) of the National Law.

8. On 22 September 2024, you responded by via email to the Notice, by the due date. Refer Attachment B.
9. On 2 July 2024, the Authority received a direct complaint, alleging a child had suffered a mouth injury on 24 January 2024, and three jaw dislocations during June, 4 June 2024, 13 June 2024 and 28 June 2024. The complainant further alleged there was no supervision within the Service.
10. Due to the risk of harm to children when inadequately supervised, the Authority determined to conduct a formal investigation.
11. Witness evidence and CCTV video footage support that at 16:04:50 hours on 28 June 2024, a child, [REDACTED], was injured by a peer, causing her jaw to be dislocated.
12. CCTV video footage further shows that there were nine children in the playground at that time without supervision.
13. Furthermore, CCTV video footage shows the child, [REDACTED], walking around the playground with a jaw injury, for a period of 68 seconds without assistance from staff.
14. On 1 October 2024, the Authority issued you with a Show Cause Notice (the Notice). The Notice included evidence being relied on by the Authority for decision making and advice as to proposed compliance actions being considered if the allegation, and engaged offence under the Law, were substantiated. Refer Attachment C for a copy of the Notice (minus attachments).
15. The allegations put to you in the Notice was as follows:

Allegation One

About 8:51am on Tuesday, 4 June 2024, you, the Nominated Supervisor failed to ensure that every reasonable precaution was taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury in that the child, [REDACTED] (3:2), remained in the Service after dislocating her jaw, for a period of more than 5 hours, in contravention of Section 167(2) of the National Law.

Allegation Two

About 4:04pm on Friday, 28 June 2024, you, the Nominated Supervisor failed to ensure that children being educated and cared for by the service were adequately supervised at all times that the children were in the care of that service, in that the child, [REDACTED] (3:8), was involved in an interaction with a peer that resulted in the child being hit in the mouth, causing her jaw to be dislocated, in contravention of Section 165(2) of the National Law.

Allegation Three

About 4:04pm on Friday, 28 June 2024, you, the Nominated Supervisor failed to ensure that every reasonable precaution was taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury in that the child, [REDACTED] (3:8), was involved in an interaction with a peer that resulted in the child being hit in the mouth, causing her jaw to be dislocated, in contravention of Section 167(2) of the National Law..

16. On 13 October 2024, you responded by via email to the Notice, by the due date. Refer Attachment D.

Law

17. The evidence obtained during the Authority's enquiries into the matter, and as provided to you via the Notice, engages the following sections of the *Law*:

Section 165(2) of the Law – Offence to inadequately supervise children

- (2) A nominated supervisor of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: \$11 400, in the case of an individual

Section 167(2) of the Law - Offence relating to protection of children from harm and hazards.

- (2) A Nominated Supervisor of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury.

Penalty: \$11 400, in the case of an individual

Section 182 of the Law – Grounds for issuing prohibition notice

- (1) The Regulatory Authority may give a prohibition notice to a person who is in any way involved in the provision of an education and care service if it considers that there may be an unacceptable risk of harm to a child or children if the person were allowed-
- (a) To remain on the education the education and acre service premises; or
 - (b) To provide education and care to children.
- (2) For the purpose of subsection (1), a person may be involved in the provision of an approved education and care service as any of the following-
- (a) An approved provider;
 - (b) A nominated supervisor;
 - (c) An educator;
 - (d) A family day care educator;
 - (e) An employee;

- (f) A contractor;
- (g) a volunteer;
- (h) a person who was formerly a person referred to in paragraphs (a) to (g) in relation to the approved education and care service -

or in any other capacity

Section 183 of the Law – Show cause notice to be given before prohibition notice

- (1) Before giving a person a prohibition notice, the Regulatory Authority must give the person a notice (a *show cause notice*) –
 - (a) stating that the Regulatory Authority proposes to give the person a prohibition notice; and
 - (b) stating the reasons for the proposed prohibition; and
 - (c) inviting the person to make a written submission to the Regulatory Authority, within a stated time of at least 14 days, about the proposed prohibition.

- (2) Subsection (1) does not apply if the Regulatory Authority is satisfied it is necessary, in the interests of the safety, health or wellbeing of a child or children, to immediately issue a prohibition notice to the person.

Obligations upon Regulatory Authority

- 18. The starting point for the Authority is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. Relevant to this decision is the objective at section 3(2)(a), namely:

'To ensure the safety, health and wellbeing of children attending education and care services;'

- 19. The relevant guiding principle at sections 3(3)(a) namely:
 - a.) that the rights and best interests of the child is paramount;

- 20. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
 - c.) to monitor and enforce compliance with this law;
 - d.) to receive and investigate complaints arising under this law.

- 21. The *Law* works to protect a particularly vulnerable part of our society — children — when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.

- 22. A key object of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.

23. The *Law* is predominantly a protective law and the exercise of powers in this type of regulatory context is recognised by Courts as not being punitive. In the case of *New South Wales Bar Association v Evatt* [1968] HCA 20 the High Court set out in clear terms that action to enforce professional standards is protective.

Reasons

24. Having considered all available evidence, your response to the Notice, and the likelihood of risk to children, I am satisfied that there may be an unacceptable risk of harm to a child or children if you were allowed to provide education and care to children.
25. During the investigation, the Authority obtained statements, documents, and CCTV video footage which support your conduct amounting to failing to ensure adequate supervision of children being educated and cared for by the Service. As such, I am satisfied that you have contravened section 165(2) of the *Law*.
26. Furthermore, I am satisfied that failing to ensure adequate supervision resulted in no reasonable precaution being taken to protect children from harms or any hazards likely to cause injury, in that a child, [REDACTED], suffered a dislocated jaw after an interaction with a peer. As such, I am satisfied that you have contravened section 167(2) of the *Law*.
27. Your response to the Notice issued on 11 September 2024, where you deny all allegations in relation to contravening section 165(2), 167(2) of the *Law* and regulation 117c of the *Education and Care Services National Regulations*.
28. You have provided Working Directly with Children documents which show that the Service was in staff to children ratio. CCTV video footage clearly shows that staff were not providing adequate supervision at the time of the allegation, contravening section 165(2) of the *Law*, giving rise to section 167(2) of the *Law*.
29. Your response to the Notice issued on 1 October 2024, where you deny all allegations in relation to contravening section 165(2), 167(2) of the *Law* and regulation 117c of the *Education and Care Services National Regulations*.
30. You have provided Working Directly with Children documents which show that the Service was in staff to children ratio. CCTV video footage clearly shows that staff were not providing adequate supervision at the time the child, [REDACTED] suffered a dislocated jaw after an interaction with a peer, contravening section 165(2) of the *Law*, giving rise to section 167(2) of the *Law*.
31. I am satisfied that on the balance of probabilities, there is reasonable, reliable, and credible evidence to substantiate these allegations, which further supports my determination that there may be an unacceptable risk of harm to a child or children if you are allowed to be involved in the provision of education and care.

32. Considering the evidence and information available, and the objectives and guiding principles of the *Law*, the Authority has decided to issue you a Prohibition Notice, pursuant to sections 182 and 183(1) of the *Law*, to come into effect on the date of this Decision.
33. This notice prohibits you from providing education and care to children for an education and care service; being engaged as an educator, family day care educator, employee, contractor, or staff member of, or being a volunteer at, an education and care service; or carrying out any activity relating to an education and care service. Please refer a copy of the Prohibition Notice at Attachment E.
34. The Authority may consider a cancellation of the Prohibition Notice in the future based on an application that provides information as set out in Section 186 of the *Law* and *Regulation 189*.
35. Section 186 of the *Law* permits a person for whom the prohibition notice is in force to apply to the Regulatory Authority to cancel the notice.

Section 186 of the Law - Cancellation of prohibition notice

- (1) If the Regulatory Authority is satisfied there is not a sufficient reason for a prohibition notice to remain in force for a person, the regulatory Authority must cancel the prohibition notice and give the person notice of the cancellation.
- (2) A person for whom a prohibition notice is in force may apply to the Regulatory Authority to cancel the notice.
- (3) The applicant must-
 - (a) be in writing; and
 - (b) include the prescribed information; and
 - (c) be signed by the person.
- (4) The person may state in the application anything the person considers relevant to the Regulatory Authority's decision about whether there would be an unacceptable risk of harm to children if the person were-
 - (a) To remain at the education and care service premises; or
 - (b) To provide education and care to the children.
- (5) The application may include a statement setting out any changes in the person's circumstances since the prohibition notice was given or since any previous application under this section that would warrant the cancellation of the notice.

Regulation 189 Application to cancel prohibition notice

For the purpose of section 186(3) (b) of the *Law*, the following information is prescribed-

- (a) the applicant's name;
- (b) contact details for the applicant, including an address for service of the decision;
- (c) a statement setting out the grounds for the application to cancel the prohibition notice.

Review rights

36. In accordance with section 192 of the *Law* a decision to give prohibition notice is a reviewable decision for external review. A person who is the subject of a reviewable decision for an external review may apply to the relevant tribunal or court for a review of the decision. For the ACT this is the ACT Civil and Administrative Tribunal. Such application must be made within 30 days after the day on which you receive the prohibition notice.
37. The *Law* applies to you as a former educator. The *Law* is applied in the ACT by the *Education and Care Services National Law (ACT) Act 2011* <http://www.legislation.act.gov.au/a/2011-42/default.asp>
38. The *Law* and *Regulations* may be viewed at: <http://www.acecqa.gov.au/national-law>, and <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
39. Should you have any questions about this Prohibition Notice please contact Jarrod Reid via email at Jarrod.Reid@act.gov.au.

Yours Sincerely



Jó Williams
Director – Regulatory Operations
Children’s Education and Care Assurance
Education and Care Regulation and Support

14 November 2024